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OFFICE OF PETITIONS

In re Application of :
Parks et al. :
Application No. 09/928,764 : ON PETITION
Filed: 13 August, 2001 :
Atty Dkt No. 019131-02700 (44446US) :

This is a decision on the petition under 1.137(b),¹ filed on 13 December, 2004, to revive the above-identified application.

The petition is **DISMISSED AS MOOT.**

On 13 August, 2001, the above-identified application was filed.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

On 13 September, 2004, a Notice of Appeal was filed.

On 13 December, 2004 (certificate of mailing 8 December, 2004), an Appeal Brief and the present petition to revive were filed.

Since the Appeal Brief filed on 13 December, 2004, was filed within the extendable period for reply to the final Office action, in accordance with 37 CFR 1.136(a), the application did not become abandoned.² The petition under 37 CFR 1.137(b) is therefore unnecessary and will be dismissed as moot. Rather, applicants will be charged for a one (1) month extension of time.

The remaining balance of \$1,380.00 will be credited to counsel's deposit account, No. 12-1322, as authorized in the present petition.

The application is being referred to Technology Center Art Unit 1711 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

²See MPEP 1206.